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10/622,712	07/18/2003	Denny George Constantine	8533B	2954

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Robert Charles Hill  
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EXAMINER
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ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/622,712

Applicant(s)

CONSTANTINE, DENNY GEORGE

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/18/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I - Figs. 1 & 2 and Species II - Figs. 3 & 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 4-6 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Robert Charles Hill on Wednesday, April 7, 2004 a provisional election was made with traverse to prosecute the invention of Species I, claims 1 and 3-14. Affirmation of this election must be made by applicant in replying to this Office action. Claim 2 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two or more traps or sets or wires used in tandem (claims 12 and 13) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 10, 12, 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regard to claim 10, the specification and figures do not disclose the wires being spaced about one inch apart.

In regard to claim 12, the figures do not show two or more traps used in tandem.

In regard to claim 13, the figures do not show two or more sets of wires used in tandem.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3, 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gompers 4,464,859.

Gompers discloses a method of attracting rabies-infected mammals (raccoons and squirrels are capable of contracting rabies) comprising providing a source of nonbiological sound (siren-like noisemaker 10) which attracts rabies-infested mammals to the source of sound (siren is capable of attracting rabies-infected animals in the

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vicinity to it) and capturing the rabies-infected mammals to the sound (a rabies-infected mammal such as a bat can be caught in cage 1; trap is not being particularly claimed).

8. Claims 7-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sweet 1,807,076.

Sweet discloses a frame (10) with a series of taut vertical wires (vertical wires of screen 14); a nonbiological sound source (12, 13) which assaults the hyperthesia of the rabies-infected mammals (sounds heard by a rabies infected mammal can cause it to attack; applicant's disclosure cites many sounds which can "anger" a rabies-infected bat) but not healthy rabies-free mammals; a smooth-sided hopper (15, 16) below the frame (10); a cage (16).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alston 721,531 in view of Luciano 4,105,992.

Alston discloses a source of biological sound source (sounds from a living first trapped mouse/rat acts a decoy to a second or subsequent mice/rats) and capturing rabies infected animals (mice and rats can be rabies-infested; capable of attracting bats), but does not disclose the use of a non-biological sound source. Luciano disclose

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the use of a non-biological sound source (wave form generator 11 with transducer 21 or ROM 23 with amplifier 33 and transducer 37) to attract rats to a desired location by generating ultrasonic signals.

In regard to claim 5, Alston and Luciano disclose the sound which is continuous (Luciano discloses sound which is continuous during time which sound is being continuously emitted).

In regard to claim 6, Alston and Luciano disclose the sound produced in short bursts of about one-third second duration (Luciano disclose duration of pulse bursts range from 10 to 120 milliseconds) separated by equal periods of silence (Luciano discloses predetermined timed intervals between pulses and trains of pulses).

11. Claims 9, 10, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet 1,807,076.

Alternatively in regard to claim 9, Sweet does not disclose the wires being too fine for the rabies-infected bats to detect with their sonar system. It would have been obvious to a person of ordinary skill in the art to make the wires of Sweet such that they have an appropriate wire diameter in order to provide a properly sized mesh that will prevent the intended insects to be caught from proceeding to the sound source and prevent them from fouling the sound source.

In regard to claim 10, Sweet does not disclose wires spaced 1 inch apart. It would have been an obvious matter of design choice to modify the wires of Sweet such that they are 1 inch apart in order to provide a mesh that will prevent large insects from proceeding through the mesh but will also sufficiently allow the sound to pass

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therethrough the mesh and because a person of ordinary skill in the art would readily space the wires as desired.

In regard to claims 12 and 13, Sweet does not disclose the use of two or more traps in tandem or the use of two or more sets of wires used in tandem separated by one to three inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ two or more traps in tandem and also two or more sets of wires in tandem, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, and because the use of two or more traps would double the number of insects collected and also using two or more sets of wires, such as for instance in series (one behind the other), would further prevent the insects from gaining access to the sound making device of Sweet (12, 13). *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Sweet does not disclose two or more sets of wires separated by one to three inches. It would have been an obvious matter of design choice to employ two or more sets of wires separated by one to three inches, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and because by spacing the two or more sets of wires one to three inches apart would allow the devices to cover more area than if they were abutting each other.

In regard to claim 14, Sweet discloses the claimed invention except for the wires being plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the wires of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of



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its suitability for the intended use as a matter of obvious design choice, and because plastic wires would be a cheaper alternative to metal wires and can be formed easily into the desired sizes, forms, and configurations. *In re Leshin*, 125 USPQ 416.

### ***Allowable Subject Matter***

12. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is an examiner's statement of reasons for allowance: the prior art of record does not disclose an apparatus for luring attack-prone, rabies-infected bats into restraint but not luring normal, uninfected bats, comprising the nonbiological sound source being above 16 kHz.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Generation 4 and House Bat Management websites show bat harp traps; The U. of Florida Book of Insect Records lists a midge as having attained a wing beat frequency of 1046 Hz (1.046 kHz); Frequency of Bee Wings


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discloses measurements for the frequency of bee wings; The Aerodynamics of Animals-Insects has a listing of wing beats per second with the most being that of the Honeybee at 250 bps (250 Hz); Price 5,241,778 discloses the use of sounds in the range of 50 cps to 300 cps (50-300 Hz) to attract bloodsucking insects; Levitt 3,931,865 discloses a device for sonically or ultrasonically attracting male mosquitoes which operates in the range of 2400 Hz and can operate up to 10,000 Hz.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA